IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 3049 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE N.G.NANDI
and
Hon'ble MR.JUSTICE D.A.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

NEW INDIA ASSURANCE CO. LTD.

Versus

AMRUTLAL DAMARLAL THAKKAR

Appearance:

1. First Appeal No. 3049 of 2000

MS LILU K BHAYA for Petitioner No. 1

MR SB BRAHMBHATT for Respondent No. 1-2

MR HARSHIT S TOLIA for Respondent No. 1-2

NOTICE UNSERVED for Respondent No. 3

CORAM : MR.JUSTICE N.G.NANDI
and
MR.JUSTICE D.A.MEHTA

Date of decision: 23/01/2003

ORAL JUDGEMENT

(Per : MR.JUSTICE N.G.NANDI)

1. On the joint request by learned advocates for the appellant and respondent nos. 1 and 2, this appeal is taken up for final hearing today.

2. It is stated by Ms. Lilu Bhaya, learned advocate for the appellant - Insurance Company that respondent no.3 - owner of the vehicle in question be deleted from the array of parties in this appeal. Accordingly, respondent no.3 is deleted from the array of parties.

3. This appeal under Section 173 of the Motor Vehicles Act,1988 (for short "the Act") is directed against the award dated 6.9.2000 under Section 163 A of the Act rendered in M.A.C.P.Misc. No. 620 of 1997 in M.A.C.Petition No. 769 of 1997 by the Motor Accident Clams Tribunal (Main) Banaskantha District at Palanpur.

4. It is suggested from the record that present respondents filed claim petition under Section 166 of the Act and also a petition under Section 163 A of the Act, claiming compensation in respect of the accident which took place on 1.10.1997 at 7.45 p.m. near Kacchi Colony, Disa, District - Banaskantha.

5. Pending the petition under Section 166 of the Act, an order under Section 163 A of the Act came to be passed by the Tribunal awarding an amount of Rs.1,52,000/- to the claimants. It is this award / order passed under Section 163 A of the Act which is assailed in the present appeal.

6. Ms. Lilu Bhaya, learned advocate for the appellant - Insurance Company has contended that an award under Section 163 A of the Act cannot be regarded to be an interim award and that the same is not subject to the out come in the award under Section 166 of the Act and, therefore, the amount awarded under Section 163 A of the Act is not subject to the adjustment against the award that may be passed in the petition filed under Section 166 of the Act. It is further contended that the petition under Section 163 A of the Act is independent and substantive and there cannot be petition under Section 166 and also 163 A of the Act. There could be either of it.

In this regard, reliance has been placed on the

decision in the case of Oriental Insurance Company Ltd. Vs. Hansrajbhai V. Kodala & Others, reported in JT 2001 (4) SC 477.

7. It is stated by Mr. H.S.Tolia, learned advocate for the respondents that he would withdraw the petition under Section 166 of the Act, pending before the claims Tribunal and, therefore, the order passed under Section 163 A of the Act need not be interfered with as the same has been passed considering the FIR, Panchanama, Inquest Panchanama, R.C.Book, Insurance Police and the age of the deceased.

8. In view of the principle laid down in the case of Oriental Insurance Company Ltd. Vs. Hansarajbhai V. Kodala & Others (supra), the above contention raised by the appellant - Insurance Company has to be accepted.

9. In the premises aforesaid, in view of the legal position as above the impugned judgement and award is liable to be quashed and set aside.

10. The impugned award under Section 163 A of the Act is hereby quashed and set aside. Appeal is allowed with no order as to costs. R & P shall be returned to the claims Tribunal immediately. An amount of Rs.1,84,000/- deposited by the Appellant - Insurance Company with the Registry of this Court be returned / refunded to the appellant - Insurance Company.

11. At this juncture, it is stated by Mr. Tolia, learned advocate for the respondents that it is apprehended that his application under Section 163 A of the Act may not be considered on merits by the claims Tribunal in view of the above order.

It would be open to the claimants to proceed with the application either under Section 163 A or 166 of the Act before the claims Tribunal.

(N.G.Nandi,J.)

(D.A.Mehta,J.)

(vipul)